

## **REMARKS**

### **Formal Matters**

Claims 1, 2, 9-11, and 19-24 are pending after entry of the amendments set forth herein.

Claims 3-8 and 12-18 have been cancelled.

Claims 1, 2, 7-11 and 19 were examined. Claims 1, 2, 7-11 and 19 were rejected.

No claims were allowed.

Claims 1, 2, 9-11 and 19 have been amended. Support for the amendments can be found in the claims as originally filed and throughout the specification at, for example, page 15, lines 10-20.

Claims 20-24 have been added. Support for the claims can be found in the specification at, for example, page 26, lines 17-26.

The specification has been amended on page 47 to remove an embedded hyperlink.

No new matter has been added.

### **Oath/Declaration**

The Office Action indicates that the Oath and Declaration for the application is defective and requires a new Oath and Declaration be filed that identifies the application by application number and filing date.

The Applicants note that an Oath and Declaration in compliance with 37 CFR 1.67(a) was filed on October 8, 2004 in response to the Notice to File Missing Parts. The filed Oath and Declaration identified the application by application number and filing date. A courtesy copy of the Oath and Declaration as filed on October 8, 2004, is provided herewith for the Examiner's convenience.

### **Drawings**

The Office Action objects to Figure 7 for allegedly being illegible and uninterpretable. However, the Applicants note that replacement sheets for Figure 7 in

compliance with 37 CFR 1.121(d) were filed on October 8, 2004 in response to the Notice to File Missing Parts. The replacement sheets replaced Figure 7 with Figures 7A – 7C. Courtesy copies of the replacement sheets as filed on October 8, 2004, are provided herewith for the Examiner's convenience.

### **Specification**

The specification on page 47 has been objected to for use of an embedded hyperlink. The specification has been amended on page 47 to remove the embedded hyperlink. Accordingly, this objection may be withdrawn.

### **Objections to the Claims**

#### ***Claims 1, 2, 7-11, and 19***

Claims 1, 2, 7-11, and 19 have been objected to as been drawn to non-elected subject matter. The claims have been amended to remove the non-elected matter. Therefore, this objection may be withdrawn.

#### ***Claims 1 and 2***

Claims 1 and 2 have been objected to for recited "reside" in association with nucleic acids instead of nucleotides. Claims 1 and 2 have been amended to remove the objectionable subject matter. Therefore, this objection may be withdrawn.

#### ***Claims 9, 10, and 19***

Claims 9, 10, and 19 have been objected to for improper antecedent basis. Claims 9, 10, and 19 have been amended to correct the antecedent basis of the claims. Therefore, this objection may be withdrawn.

### **Rejection under 35 U.S.C. § 101**

Claims 1, 2, 7-11 and 19 have been rejected under 35 U.S.C. § 101 for allegedly reading on a product of nature. This rejection is respectfully traversed. Claim 1 has been amended to recite "present in other than its natural environment." This phrase is defined in the specification, see page 13, lines 31-32, and clearly

distinguishes the claimed compositions such that they do not read on a product of nature. As such, this rejection may be withdrawn.

**Rejection under 35 U.S.C. § 112, first paragraph (Enablement)**

Claims 1-9 and 15-16 have been rejected under 35 U.S.C. § 112, first paragraph, for allegedly lacking enablement. In view of the remarks made herein, this rejection is respectfully traversed as applied and as it may be applied to the pending claims.

As noted above, in the spirit of expediting prosecution and without conceding to the correctness of the rejection, the claims have been amended to remove the objectionable language and to recite that the claimed nucleic acid has a sequence identity of at least 95% with SEQ ID NO:17.

In view of the amendments to the claims, the Applicants respectfully request that this rejection be withdrawn.

**Rejection under 35 U.S.C. § 112, first paragraph (Written Description)**

Claims 1, 2, 7-11 and 19 have been rejected under 35 U.S.C. § 112, first paragraph, for allegedly lacking written description. This rejection is respectfully traversed as applied and as it may be applied to the pending claims.

In the spirit of expediting prosecution, the claims have been amended to recite that "**nucleic acid has a sequence identity of at least 95% with SEQ ID NO:17**". As such, the amendment provides the structure and function for the claimed nucleic acids.

In view of the above and the amendments to the claims, the Applicants respectfully request that this rejection be withdrawn.

**Rejection under 35 U.S.C. § 112, second paragraph**

***(a) Claim 1 (Office Action, page 19)***

Claim 1 has been rejected under 35 U.S.C. § 112 for reciting "substantially the same as". Claim 1 has been amended to remove the objectionable language. Accordingly, this rejection may be withdrawn.

***(b) Claim 7 (Office Action, page 12)***

Claim 7 has been rejected under 35 U.S.C. § 112. This rejection is rendered moot in view of the cancellation of the claim.

***(c) Claim 8 (Office Action, page 14)***

Claim 8 has been rejected under 35 U.S.C. § 112. This rejection is rendered moot in view of the cancellation of the claim.

**Rejection under 35 U.S.C. § 102(a)**

Claims 1, 2, and 7 have been rejected for allegedly being anticipated by Lesser et al. (GenBank Accession No. AF406766 (2001)) under 35 U.S.C. § 102(a). In view of the amendments to the claims, this rejection may be withdrawn.

In the spirit of expediting prosecution and without conceding as to the correctness of the rejection, the claims have been amended to recite that the protein have a sequence identity of at least 95% to the sequence of SEQ ID NO:17. Since the cited reference does not teach a protein having a sequence identity of at least 95% to the sequence of SEQ ID NO:17, the cited reference does not teach each and every limitation found in the claims.

As such, Claims 1, 2, and 7 are not anticipated under 35 U.S.C. § 102(a) by the cited reference. Therefore, the Applicants respectfully request that this rejection be withdrawn.

**Rejection under 35 U.S.C. § 102(b)**

Claim 7 has been rejected for allegedly being anticipated by Singh et al. (J. Virol. Meth. 86:121-129 (2000)) under 35 U.S.C. § 102(b). This rejection is rendered moot in view of the cancellation of the claim.

**Rejection under 35 U.S.C. § 102(e)**

***Falkowski et al. (USP 6,933,375)***

Claims 1, 2, 7-11 and 19 have been rejected for allegedly being anticipated by Falkowski et al. (USP 6,933,375) under 35 U.S.C. § 102(e). In view of the amendments to the claims, this rejection may be withdrawn.

In the spirit of expediting prosecution and without conceding as to the correctness of the rejection, the claims have been amended to recite that the protein have a sequence identity of at least 95% to the sequence of SEQ ID NO:17. Since the cited reference does not teach a protein having a sequence identity of at least 95% to the sequence of SEQ ID NO:17, the cited reference does not teach each and every limitation found in the claims.

As such, Claims 1, 2, 7-11 and 19 are not anticipated under 35 U.S.C. § 102(e) by the cited reference. Therefore, the Applicants respectfully request that this rejection be withdrawn.

***Lukyanov et al. (USP 6,969,597)***

Claims 1, 2, 7-11 and 19 have been rejected for allegedly being anticipated by Lukyanov et al. (USP 6,969,597) under 35 U.S.C. § 102(e). In view of the amendments to the claims, this rejection may be withdrawn.

In the spirit of expediting prosecution and without conceding as to the correctness of the rejection, the claims have been amended to recite that the protein have a sequence identity of at least 95% to the sequence of SEQ ID NO:17. Since the cited reference does not teach a protein having a sequence identity of at least 95% to the

sequence of SEQ ID NO:17, the cited reference does not teach each and every limitation found in the claims.

As such, Claims 1, 2, 7-11 and 19 are not anticipated under 35 U.S.C. § 102(e) by the cited reference. Therefore, the Applicants respectfully request that this rejection be withdrawn.

**Obvious-Type Double Patenting**

Claims 1, 2, 7-11 and 19 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1, 5-8, and 16 of co-pending Application No. 10/187,622. This rejection is respectfully traversed as applied and as it may be applied to the pending claims.

The Applicants respectfully disagree. As noted above, the claims have been amended to recite that the protein have a sequence identity of at least 95% to the sequence of SEQ ID NO:17.

However, co-pending '622 application does not teach a protein having a sequence identity of at least 95% to the sequence of SEQ ID NO:17. Therefore, the cited reference does not teach each and every limitation found in the claims. Accordingly, the Applicants respectfully request that this rejection be withdrawn.

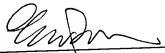
**CONCLUSION**

In view of the above remarks, this application is considered to be in good and proper form for allowance and the Examiner is respectfully requested to pass this application to issuance. If the Examiner finds that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone Bret Field at 650-327-3400.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815.

Respectfully submitted,  
BOZICEVIC, FIELD & FRANCIS LLP

Date: Aug. 25, 2006

By:   
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Date: 8.25.06

By:   
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Enclosure:

- Courtesy copy of Declaration as filed on October 8, 2004.
- Courtesy copy of replacement Drawings as filed on October 8, 2004.

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